

Comments of
National Consumer Law Center (on behalf of its low income clients)

and

Americans for Financial Reform
California Reinvestment Coalition
Consumer Action
Consumer Federation of America
Consumers Union
Empire Justice Center
Neighborhood Economic Development Advocacy Project
U.S. PIRG¹

on

Department of Treasury
Financial Access Activities; Comment Request
76 Fed. Reg. 56499 (Sept. 13, 2011)

Nov. 14, 2011

Thank you for the opportunity to comment on the Department of Treasury's activities to expand access to mainstream financial institutions. We support Treasury's efforts to ensure that all consumers have access to safe and affordable financial services so that consumers are not relegated to second-class or predatory products and services.

Treasury's endeavors are critical in the current environment. The current economic crisis has strained the financial stability of many families and pushed them out of the middle class. The poverty level now includes record numbers of American families. The number of unbanked consumers, already unacceptably high, is rising.

In these comments we:

- Describe features that transaction accounts should have to meet the needs of lower income consumers and protect them in the banking system.
- Explain why the loophole in Treasury's interim final garnishment rule makes bank accounts unsafe for consumers whose federal benefits are not protected from child support enforcement orders.
- Describe the features that small loans should have to be a meaningful alternative to payday loans.

¹ Descriptions of each organization are attached at the end of these comments. These comments were written primarily by Lauren Saunders at the National Consumer Law Center.

Reasonable Transaction Account Features to Meet the Financial Needs of Low- and Moderate-Income Consumers

We urge Treasury to place a priority on making sure that all consumers have access to safe and affordable transaction accounts. Bank fees are rising for a variety of reasons, making traditional bank accounts unaffordable for many. ChexSystems and similar credit-checking entities, overdraft fees, and other bank practices have made bank accounts either unavailable or dangerous for many consumers. New research shows that the number of unbanked consumers is increasing.²

The Federal Deposit Insurance Corporation is doing important work through its pilot project on safe bank accounts. The Treasury Department should build on this initiative through additional measures to increase the availability of safe, affordable accounts for low- and moderate-income consumers.

For example, Treasury could work with the Bank On programs coordinated by the National League of Cities to improve the accounts offered through those programs. The Bank On programs have done important work to reduce barriers to bank accounts such as by enlisting institutions that will lower minimum balances or give consumers with blemished histories a second chance. But the Bank On programs have not been successful in convincing most banks to eliminate the overdraft fees that drove many consumers away from mainstream banking or to make other modifications to address the special needs of lower income consumers. Part of the problem is that each city must negotiate separately with banks and credit unions, and financial institutions rarely want to make modifications piecemeal for individual markets. Treasury could assist the Bank On effort by pushing for higher national minimum standards for participation in Bank On programs.

For most consumers, a traditional, full-featured checking account, if appropriately designed, will best serve their needs and provide access to the financial mainstream. Prepaid cards also are worth studying, as prepaid cards have been available to consumers excluded from the banking system, and they are evolving into more fully-featured accounts. Indeed, the line between bank accounts and prepaid cards is blurring, as prepaid cards add more features to make those accounts more usable, and as some banks, lamentably, copy the fees and minimal human interaction typical of prepaid cards.

Whatever the form, it is critical that lower-income consumers not be limited to a second class account or be shut out of the full range of mainstream financial services. Accounts with the following features are necessary to serve the needs of low- and moderate-income individuals³:

² See, e.g., Pew Health Group, *Slipping behind: Low-Income Los Angeles Households Drift Further from the Financial Mainstream* (Oct. 2011).

³ For more details, see National Consumer Law Center, *Features of a Safe Basic Banking or Prepaid Card Account*, available at http://www.nclc.org/images/pdf/banking_and_payment_systems/issue-brief-safe-

- **Low Barriers to Entry.** Consumers with low incomes or with blemished credit or ChexSystems histories need access and a second chance. Minimum balance requirements deter many consumers.
- **Simple and transparent costs.** The primary fee should be a monthly fee. Otherwise, consumers may be lured in initially with an account that looks inexpensive, only to be forced out when the true cost is found in hidden fees. Penalty fees and fees for ordinary use of the account should be eliminated or minimized.
- **Access to Checks or Safe Check Alternatives.** Checkless checking can avoid the problem of overdrafts, but purely electronic models cannot fully serve consumers who need to pay landlords, child care or other merchants who do not accept plastic. At a minimum, electronic accounts should provide some free or inexpensive money orders or some type of pre-funded checks.
- **Address check cashing and cash access needs.** For those without the type of income that can be direct deposited, check hold times and the expense, difficulty or impossibility of depositing checks into prepaid card accounts can make bank accounts or prepaid card accounts unworkable for many consumers. Accounts should come with same-day funds availability for low-risk checks or low fees for same-day check cashing. Banks should also better publicize that check-hold times have decreased. Check-hold rules now permit access to \$200 the next business day and \$200 the day after that for most checks.
- **Consider remittance services.** Many unbanked consumers send money abroad or just across town. Offering services that these consumers use could attract them to a bank.
- **No credit features or overdraft fees.** Overdraft fees have driven many out of the banking system. Newer triple-digit rate “account advance” bank and prepaid card payday loans put consumers in a cycle of debt just like traditional payday loans.⁴ A deposit account should be a safe place for deposits and should not have any credit features that give the creditor first cut at benefits or wages, before the consumer pays for food, rent or medicine. If overdraft protection is appropriate, it should be offered through links to savings or an affordable credit card or

[banking.pdf](#); Comments of Consumer Federation of America, National Consumer Law Center, et al. on the FDIC Safe Account Template (June 7, 2010), available at http://www.nclc.org/images/pdf/banking_and_payment_systems/template-fdic-savings_transaction_accounts.pdf; Letter from Consumer Union, National Consumer Law Center, et al. to FDIC on Safe Transaction Account Template for Prepaid Cards (Nov. 24, 2010), http://www.consumerfed.org/pdfs/FDICletter_safe-template-prepaid.pdf

⁴ See Center for Responsible Lending , “Big Bank Payday Loans: High-interest loans through checking accounts keep customers in long-term debt” (July 21, 2011), available at <http://www.responsiblelending.org/payday-lending/research-analysis/big-bank-payday-loans.html>.

traditional line of credit, but not one that requires automatic repayment.⁵ Credit features that gobble up deposits are especially problematic when tax refunds are direct deposited to bank or prepaid card accounts, as those refunds often include payment of the Earned Income Tax Credit and other federal benefits distributed through the tax filing system.

- **Ample free access to customer service and to information to manage the account.** One of the most significant drawbacks of prepaid cards is that they do not come with a branch where the consumer can have an in-person conversation. Instead prepaid card providers often charge fees for customer service and even for ATM balance inquires. Some bank accounts are looking to replicate the prepaid card model. But free access to account information and to customer service when there is a problem is essential. Consumers new to the banking system especially should not feel that they are being nicked and dimed with fees as they learn how to use their accounts. Similarly, prepaid cards typically do not provide paper statements and banks are pushing to eliminate them. While statements are available online, not all consumers can or will monitor their accounts online. A free statement option and other usable forms of transaction information are essential to prevent identity theft and to help consumers monitor for unwanted fees, unauthorized transactions and billing errors.
- **Facilitate savings.** Savings is a habit and provides the best protection when unexpected expenses arise. Accounts should provide options that make regular savings, even in small amounts, easy and attractive.
- **Protection against unauthorized charges, loss, theft or errors.** Protection under Regulation E is standard on bank accounts and needs to be on prepaid cards too.
- **FDIC or National Credit Union Share Insurance Fund insurance payable to the consumer in case of bank failure.** Protection from bank insolvency is standard on bank accounts under \$250,000 and should be for consumers who use prepaid cards.
- **No penalties for inactivity or closing the account.** Not every account is right for every consumer. No fees should be charged for inactivity, requesting a final check, or closing an account. Consumers should have the right to close an account and stop fees from piling up even if it is overdrawn.

Make Bank Accounts Safe with Improved Garnishment Protection

Earlier this year, the Treasury Department adopted important new protections against garnishment of bank accounts containing Social Security, Supplemental Security

⁵ See National Consumer Law Center, Stopping the Payday Loan Trap: Alternatives that Work, Ones that Don't (June 2010), available at http://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/report-stopping-payday-trap.pdf.

Income (SSI) and other federal benefits. Treasury appropriately recognized that it could not push recipients to give up paper checks and open bank accounts with direct deposit if their money was not safe there. The new garnishment rules give comfort to many who are receiving their funds by direct deposit.

Yet Treasury's goal of bringing more unbanked consumers into the financial mainstream and expanding access to bank accounts may be frustrated because, for some consumers, a bank account is still a dangerous place for their money. As important as the garnishment rule is, it has two significant gaps:

- Orders from state child support enforcement agencies are completely exempt, and garnishment in response to those orders could leave consumers penniless.
- The definition of "garnishment order" needs to be expanded to include orders from state tax departments and similar state agencies that issue orders without going to court.

Even for those consumers who are not subject to these orders, stories of garnishment of Social Security or SSI could make them reluctant to open bank accounts. These issues must be addressed if we wish to persuade struggling consumers to enter the financial mainstream.

The gap in the new garnishment rules is that it allows all benefits, including SSI, Social Security and Veterans' benefits, to be garnished *in full* in response to an order from a state child support enforcement agency. If the state agency seeks administrative offset by serving the order on Treasury, SSI (a poverty program) is exempt, and at most 65% of a recipient's Social Security check can be taken. But if the order is served on the bank holding the consumer's bank account, the garnishment rules permit *every penny of income* to be taken, leaving the consumer with no money for food, rent or anything else. As we described in our comments on the interim garnishment rules, we believe that the rules do not comply with federal law protecting this income.⁶

Moreover, some child support orders are quite old, have been accruing 10% annual interest for years, and have exploded in amount. The orders continue growing long after the child is an adult. While it is appropriate to ask parents who are subject to child support orders to reimburse states that have paid benefits to the custodial parent, federal law recognizes that no one should be left destitute and everyone needs money for basic necessities.

The garnishment rule also has a loophole for other state and non-federal garnishments.⁷ In New York, for example, the State Department of Taxation obtains a tax judgment out of court. It then collects that judgment through bank garnishment by

⁶ The comments were filed May 25, 2011 and are available at http://www.nclc.org/images/pdf/banking_and_payment_systems/comments-interim-rule-on-garnishment.pdf. Treasury has yet to issue final rules.

⁷ See Comments of Legal Services of New York City on Interim Rule on Garnishment of Accounts Containing Federal Benefit Payments, RIN Nos. 3206-AM17 et al (May 24,2011).

servicing a “Tax Compliance Levy” on a bank. Tax departments of other states may similarly serve garnishment orders on banks without going to court. A bank could easily argue these orders are not a “garnishment order” within the meaning of the Interim Rule and that every last penny of Social Security, Veterans or SSI funds could be seized.

Treasury could help to bring these consumers into the mainstream and to make bank accounts a safe place for them by plugging these holes in the federal garnishment rules.

Reasonable Features of Safe and Appropriate Small Loans

The request for comments notes that Treasury is authorized to provide grants or cooperative agreements for small-dollar loans. While access to transaction accounts is the greater priority, and credit is not appropriate for many, we offer these comments on the features of a safe and affordable small loan:

- An annual rate of no more than 36%, including all fees other than a single, small annual application or participation fee.
- A term of at least 90 days, or one month per \$100 borrowed;
- Multiple equal installment payments rather than a single balloon payment;
- No requirement that the borrower turn over a post-dated check or electronic access to a bank account.⁸

Many credit unions offer small loans with these features.⁹

Unfortunately, the new trend in the banking world is to offer payday loans (often called “account advance”) on very similar terms to traditional triple-digit, short-term, balloon-payment payday loans.¹⁰ Bank payday loans put consumers into the same debt trap as traditional payday loans.¹¹

Bank payday loans are not only destructive; they could also lead to account closures and push more consumers onto ChexSystems and the ranks of unbanked. Banks also continue to encourage consumers to incur overdraft fees, which are one of the biggest reasons people leave bank accounts.

⁸ For more details, see National Consumer Law Center, *Stopping the Payday Loan Trap: Alternatives that Work, Ones that Don't* (June 2010), available at http://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/report-stopping-payday-trap.pdf.

⁹ *See id.*

¹⁰ *See* National Consumer Law Center, “300% Bank Payday Loans Spreading” (August 2011), available at http://www.nclc.org/images/pdf/banking_and_payment_systems/ib_bank_payday_spreading.pdf.

¹¹ *See* Center for Responsible Lending, “Big Bank Payday Loans: High-interest loans through checking accounts keep customers in long-term debt” (July 21, 2011), available at <http://www.responsiblelending.org/payday-lending/research-analysis/big-bank-payday-loans.html>; Randy Tucker, “Banks offering customers loans against their paychecks,” *Dayton Daily News* (Nov. 8, 2011); National Consumer Law Center, *Runaway Bandwagon: How the Government's Push for Direct Deposit of Social Security Exposes Seniors to Predatory Bank Loans* (July 2010), available at <http://www.nclc.org/images/pdf/pr-reports/runaway-bandwagon.pdf>.

We welcome any efforts by Treasury to encourage banks to offer affordable lines of credit with the features we list above instead of fee-based overdraft loans or “account advance” payday loans.

Conclusion

Thank you for the opportunity to comment on Treasury’s financial inclusion activities. This is an important initiative and we would be happy to discuss future efforts to bring all consumers access to the full range of fair, safe and affordable financial products.

Addendum: Organizational Biographies

National Consumer Law Center® is a non-profit Massachusetts Corporation, founded in 1969, providing legal expertise on consumer law issues to public and private attorneys, policy makers, and consumer advocates across the country, with a special focus on low-income and vulnerable consumers. NCLC publishes a series of 18 practice treatises on consumer laws and other publications including Stop Predatory Lending and Surviving Debt. NCLC's attorneys have been closely involved with the enactment of and regulations under virtually all federal laws affecting consumer credit since the 1970s.

Americans for Financial Reform is a coalition of over 250 national, state, and local organizations working to reform and restore oversight, accountability, and transparency to the nation's financial system. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, faith based and business groups as well as respected experts.

California Reinvestment Coalition advocates for fair and equal access to banking and financial services for California's low-income communities and communities of color. CRC works to create positive economic opportunities for neighborhoods that are underserved by mainstream financial institutions, and where financial predators have expanded. Started as a small ad-hoc committee in San Francisco over 25 years ago, CRC has grown into the largest state community reinvestment coalition in the country with a membership of approximately 300 nonprofit organizations working for affordable housing, economic development, and economic justice in low-income communities and communities of color. Among our members are a diverse set of organizations including nonprofit housing counselors, foreclosure prevention specialists, consumer advocates, community organizers, legal service providers, community banks, and technical assistance providers.

Consumer Action empowers underrepresented consumers nationwide to assert their rights in the marketplace and financially prosper through multilingual financial education materials, community outreach, and grassroots "make your voice heard" advocacy.

Consumer Federation of America is a nonprofit association of some 300 national, state, and local pro-consumer organizations created in 1968 to represent the consumer interest through research, advocacy, and education.

Consumers Union of United States, Inc., publisher of Consumer Reports®, is a nonprofit membership organization chartered in 1936 to provide consumers with information, education, and counsel about goods, services, health and personal finance. Consumers Union's publications and services have a combined paid circulation of approximately 8.3 million.

Empire Justice Center is a statewide, multi-issue, multi-strategy public interest law firm focused on changing the "systems" within which poor and low income families live. With a focus on poverty law, Empire Justice undertakes research and training, acts as an

informational clearinghouse, and provides litigation backup to local legal services programs and community based organizations. As an advocacy organization, Empire Justice engages in legislative and administrative advocacy on behalf of those impacted by poverty and discrimination. As a non-profit law firm, Empire Justice provides legal assistance to those in need and undertake impact litigation in order to protect and defend the rights of disenfranchised New Yorkers.

Neighborhood Economic Development Advocacy Project is a resource and advocacy center for community groups in New York City with the mission of promoting community economic justice and eliminating discriminatory economic practices that harm communities and perpetuate inequality and poverty.

U.S. PIRG serves as the national office and federation of state PIRGs. The state Public Interest Research Groups are non-profit, non-partisan public interest advocacy organizations that take on powerful interests on behalf of their members.